UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

FLORINDA IZAZAGA CARDENAS,

Plaintiff,

v.

COUNTY OF NAPA,

Defendant.

Case No. 24-cv-04248-DMR

ORDER ON MOTION TO DISMISS FIRST AMENDED COMPLAINT

Re: Dkt. No. 12

Plaintiff Florinda Izazaga Cardenas filed a complaint against the County of Napa ("the County") and Does 1-50 alleging claims arising out of the death of her son, Daniel Rivera Izazaga, following his detention at the Napa County Jail. The County now moves pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss the first amended complaint ("FAC"). [Docket No. 12.] This matter is suitable for resolution without a hearing. Civ. L.R. 7-1(b). For the following reasons, the motion to dismiss is granted in part and denied in part.

I. BACKGROUND

The complaint contains the following allegations, all of which are taken as true for purposes of this motion.[1] Plaintiff Cardenas is Izazaga's mother and successor in interest. On August 15, 2023, Izazaga was arrested and detained at the Napa County Jail. During his detention, jail medical staff diagnosed Izazaga with depression. [Docket No. 12 (FAC) ¶¶ 1, 7.] Cardenas alleges on information and belief that despite Izazaga's depression diagnosis, County employees including jail medical staff, mental health medical professionals, and/or Napa County Sheriff's Office supervisors "did not house [Izazaga] in a medical and/or safety cells" or "place

[1] When reviewing a motion to dismiss for failure to state a claim, the court must "accept as true all of the factual allegations contained in the complaint." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (citation omitted).

him under the highest level of medical observation for detainees at risk of self-harm." *Id*. at ¶ 14. She further alleges on information and belief that despite Izazaga's "worsening mental health symptoms," Defendants Does 1-50 "elected to house [him] in general population at the Napa County Jail for the entirety of his detention[.]" *Id*. at ¶ 15.

On October 15, 2023, Izazaga hung himself in his cell. He was taken to a hospital and placed on life support. He died on October 24, 2023 after being taken off life support. *Id*. at ¶¶ 16, 17. Cardenas alleges on information and belief that Izazaga would not have had access to the materials he used to hang himself "but for Defendants Does 1-50's decisions to not place [him] under the highest level of medical supervision and instead to house him in general population." *Id*. at ¶ 18. Cardenas alleges that after Izazaga's death, she and her family tried to get information from the County regarding Izazaga's detention and death and were "repeatedly stonewalled" and "told that they would need to hire a lawyer to get any information" regarding his death. *Id*. at ¶ 19.

Cardenas alleges the following claims in the FAC: 1) 42 U.S.C. § 1983 claim for deliberate indifference to Izazaga's serious medical needs while in custody in violation of the Fourteenth Amendment, by Cardenas as successor-in-interest to Izazaga against Does 1-50; 2) section 1983 claim for violation of Cardenas's right to familial association based upon the Fourteenth Amendment, by Cardenas individually against Does 1-50; 3) negligence, by Cardenas individually and as successor-in-interest against Does 1-50 and the County; 4) violation of the Bane Act, California Civ. Code § 52.1, by Cardenas individually against Does 1-50 and the County; and 5) violation of California Government Code section 845.6, by Cardenas individually and as successor-in-interest against Does 1-50 and the County. The County now moves to dismiss claims 3, 4, and 5.

II. LEGAL STANDARD

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the claims alleged in the complaint. *See Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). When reviewing a motion to dismiss for failure to state a claim, the court must "accept as true all of the factual allegations contained in the complaint," *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)

(per curiam) (citation omitted), and may dismiss a claim "only where there is no cognizable legal theory" or there is an absence of "sufficient factual matter to state a facially plausible claim to relief." *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009); *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)) (quotation marks omitted). A claim has facial plausibility when a plaintiff "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citation omitted). In other words, the facts alleged must demonstrate "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)); *see Lee v. City of L.A.*, 250 F.3d 668, 679 (9th Cir. 2001), *overruled on other grounds by Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002).

III. DISCUSSION

A. Survival Claims

Cardenas asserts Claims 3 and 5 as survival claims on behalf of Izazaga. The County argues that Cardenas has not satisfied the requirements of California Code of Civil Procedure section 377.32 to bring the survival claims. Mot. 11.

Under California law, "a cause of action for . . . a person is not lost by reason of the person's death, but survives subject to the applicable limitations period." Cal. Civ. Proc. Code § 377.20(a). A cause of action belonging to the decedent "passes to the decedent's successor in interest . . . and an action may be commenced by the decedent's personal representative or, if none, by the decedent's successor in interest." Cal. Civ. Proc. Code § 377.30; *Tatum v. City & Cty. of San Francisco*, 441 F.3d 1090, 1093 n.2 (9th Cir. 2006) ("Under California law, if an injury giving rise to liability occurs before a decedent's death, then the claim survives to the decedent's estate. Where there is no personal representative for the estate, the decedent's 'successor in interest' may prosecute the survival action if the person purporting to act as successor in interest satisfies the requirements of California law. . . ." (internal citations omitted) (citing Cal. Civ. Proc. Code §§ 377.30, 377.32)). California Code of Civil Procedure section

377.11 states that the term "'decedent's successor in interest' means the beneficiary of the decedent's estate or other successor in interest who succeeds to a cause of action or to a particular item of property that is the subject of a cause of action." Cal. Code Civ. Proc. § 377.11.

California Code of Civil Procedure section 377.32 states that a person "who seeks to commence an action or proceeding or to continue a pending action or proceeding as the decedent's successor in interest . . . shall execute and file an affidavit or declaration under penalty of perjury" providing specific information about the decedent, the decedent's estate, and the person's status as the decedent's successor in interest. Cal. Code Civ. Proc. § 377.32(a)(1)-(7).

Cardenas filed a declaration with her opposition to the motion to dismiss in which she states that she is Izazaga's "biological mother," that there are no proceedings pending in California for the administration of Izazaga's estate, and that Cardenas is her son's successor-in-interest as defined in California Code of Civil Procedure 377.11 and succeeds to Izazaga's interest in this action. [Docket No. 18-1 (Cardenas Decl. Sept. 18, 2024) ¶¶ 1-4.] She also states the place of Izazaga's death as required by section 377.32(a)(2) and states that "[n]o other person has a superior right to commence the action or proceeding or to be substituted for the decedent in the pending action or proceeding," as required by section 377.32(a)(6). *Id*. at ¶¶ 2, 5. Cardenas submitted a copy of Izazaga's death certificate. [Docket No. 18-1 (Norman Decl. Sept. 20, 2024) ¶ 2, Ex. 1.] The court concludes that the requirements of section 377.32 have been satisfied.

B. California Government Code section 845.6[2]

Claim 5 is for failure to summon medical care in violation of California Government Code section 845.6. Cardenas brings this claim individually and as Izazaga's successor-in-interest. Section 845.6 provides in relevant part that:

> Neither a public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; but . . . a public employee, and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care. . . .

[2] As Plaintiffs' negligence claim is based in part on California Civil Code section 845.6, the court discusses the section 845.6 claim first and then addresses the negligence claim.

Cal. Gov't Code § 845.6. To state a claim under section 845.6, "a prisoner must establish three elements: (1) the public employee knew or had reason to know of the need (2) for immediate medical care, and (3) failed to reasonably summon such care." *Jett v. Penner*, 439 F.3d 1091, 1099 (9th Cir. 2006). "Liability under section 845.6 is limited to serious and obvious medical conditions requiring immediate care." *Id*. (quoting *Watson v. State*, 21 Cal. App. 4th 836, 841 (1993)). "'[I]mmediate' does not signify urgent; rather, the obligation to summon immediate medical care requires that the public employee act in a 'timely' manner, so as to prevent further injury." *Horton by Horton v. City of Santa Maria*, 915 F.3d 592, 608 (9th Cir. 2019) (citing *Jett*, 439 F.3d at 1093). However, section 845.6 "does not impose a duty to monitor the quality of care provided." *Jett*, 439 F.3d at 1099 (citing *Watson*, 21 Cal. App. 4th at 843).

As an initial matter, Cardenas asserts this claim both in her individual capacity and as Izazaga's successor-in-interest. However, the FAC alleges no facts supporting a claim by Cardenas on her own behalf, as it does not (and she cannot) allege that she was a prisoner for whom immediate medical care was necessary or that such care was not provided. Accordingly, the claim is dismissed with prejudice as to Cardenas on her own behalf.

As to Cardenas's claim as Izazaga's successor-in-interest, the FAC alleges in a conclusory manner that Does 1-50 "knew or had reason to know that [Izazaga] was in need of serious medical treatment and supervision, and each failed to take reasonable action to place [him] under the highest level of medical supervision" and "failed to take reasonable action to summon such care and treatment in violation of California Government Code § 845.6." FAC ¶¶ 47, 48. This is insufficient to state a claim under section 845.6 because Cardenas alleges no specific facts that any public employee, acting with the scope of their employment, "fail[ed] to take reasonable action to summon . . . medical care." In fact, the FAC admits that Izazaga received medical care as it alleges that jail medical staff diagnosed him with depression. FAC ¶ 13. Under California law, "once an inmate is receiving medical care, § 845.6 does not create a duty to provide adequate or appropriate care." *Resendiz v. Cnty. of Monterey*, No. 14-CV-05495-LHK, 2015 WL 7075694, at *8 (N.D. Cal. Nov. 13, 2015) (citing *Watson*, 21 Cal. App. 4th at 841-43). "It is not a violation of

§ 845.6 to fail 'to provide further treatment, or to ensure further diagnosis or treatment, or to monitor [the prisoner] or follow up on his progress.'" *Id.* (quoting *Castaneda v. Dep't Corrs. & Rehab.*, 212 Cal. App. 4th 1051, 1072 (2013)).

In response, Cardenas argues that "district courts across the Ninth Circuit have consistently found that suicide is a mental health problem for which incarcerated individuals have a right to receive medical care, which can include withholding items that can be used for self-harm and providing additional surveillance." Opp'n 8 (citing *Arias v. Cnty. of Los Angeles*, No. CV 21-06865 MWF KES, 2022 WL 1557057, at *3 (C.D. Cal. Mar. 29, 2022) (collecting cases)). However, as *Arias* notes, "many courts have held that knowledge of a heightened suicide risk followed by a suicide is factually sufficient to state a claim under section 845.6." 2022 WL 1557057, at *3. In this case, the FAC does not allege facts supporting an inference that County employees "were aware of [Izazaga's] vulnerability to suicide." *See id.* (dismissing section 845.6 claim where "Defendants had no reason to know that Decedent needed immediate medical care to treat his vulnerability to suicide"). The FAC references Izazaga's "worsening mental health symptoms," FAC ¶ 15, but does not describe them or otherwise allege that his symptoms indicated a heightened suicide risk of which any County employees had knowledge.

Accordingly, the section 845.6 claim by Cardenas as successor-in-interest is dismissed. As it is not clear that amendment would be futile, the claim is dismissed with leave to amend.

C. Negligence

Claim 3 is for negligence on behalf of Cardenas individually and as Izazaga's successor-in-interest. Cardenas alleges that Does 1-50 breached their duty to Cardenas and Izazaga to act with due care and breached their duty to Izazaga to act with reasonable care, and that the County is vicariously liable for its employees' acts and omissions pursuant to California Government Code section 815.2. FAC ¶¶ 34-36, 38. Specifically, the FAC alleges that Does 1-50 breached their obligations to refrain from being deliberately indifferent to Izazaga's serious medical needs and to refrain from violating Cardenas's Fourteenth Amendment right to familial association. *Id.* at ¶ 36.

The County argues that the FAC fails to state a negligence claim because it does not plead "facts suggesting any County employees owed a duty to [Izazaga] and breached that duty." The

County also argues that it is immune from liability under California Government Code sections 844.6 and 845.6. Mot. 4-5. The County does not address, and thus does not challenge, the negligence claim brought by Cardenas on her own behalf.

"Under California law, '[t]he elements of negligence are: (1) defendant's obligation to conform to a certain standard of conduct for the protection of others against unreasonable risks (duty); (2) failure to conform to that standard (breach of duty); (3) a reasonably close connection between the defendant's conduct and resulting injuries (proximate cause); and (4) actual loss (damages).'" *Corales v. Bennett*, 567 F.3d 554, 572 (9th Cir. 2009) (quoting *McGarry v. Sax*, 158 Cal. App. 4th 983, 994 (2008)). "A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative." Cal. Gov't Code § 815.2(a).

In the opposition, Cardenas clarifies that the negligence claim is based upon Izazaga's "constitutional right to be free from deliberate indifference to [his] serious medical need" and that Does 1-50 "acted negligently by failing to summon medical care" under California Government Code section 845.6. Opp'n 5-7. With respect to the portion of the negligence claim based upon violation of section 845.6, as previously discussed, the claim is dismissed because the FAC does not sufficiently allege that County employees failed to summon medical care in violation of Section 845.6.

Turning to the negligence claim based on deliberate indifference to Izazaga's serious medical need, "[i]n California, prison officials owe detainees a duty to protect them from foreseeable harm." *Cravotta v. Cnty. of Sacramento*, 717 F. Supp. 3d 941, 967 (E.D. Cal. 2024) (quoting *Cotta v. County of Kings*, 686 F. App'x 467, 469 (9th Cir. 2017)). "This standard requires a much lower level of culpability than deliberate indifference." *Id*. (citing *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016)). Here, the FAC does not allege sufficient facts to support a reasonable inference that Izazaga's death by suicide was a foreseeable harm. It alleges only that Izazaga was diagnosed with depression and that at some unspecified point in time, he experienced "worsening mental health symptoms." FAC ¶¶ 13, 15. It alleges no facts

about his particular symptoms or whether County employees could even perceive his mental health symptoms. An allegation of worsening mental health symptoms of depression, standing alone, does not support the inference that Izazaga was suicidal or that his suicide was foreseeable. Accordingly, Cardenas's negligence claim based on deliberate indifference to Izazaga's serious medical need is dismissed with leave to amend.

D. Bane Act

Cardenas asserts a Bane Act claim solely on her own behalf. The Bane Act provides a private right of action for damages against any person, whether acting under color of law or not, who interferes or attempts to interfere "by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws" of California. Cal. Civ. Code § 52.1(a), (b). Cardenas alleges that Defendant Does 1-50 and the County violated her right to familial association under the U.S. and California Constitutions. FAC ¶ 42.

Strangely, the County's motion focuses on Izazaga's constitutional claim of deliberate indifference to serious medical needs, *(see* Mot. 7-9, Opp'n 9-11; Reply 7-8), even though the FAC does not allege a Bane Act claim on behalf of Izazaga. Instead, Cardenas asserts a Bane Act claim solely on her own behalf: "Plaintiff brings her 'Bane Act' claim individually for direct violation of her own rights." FAC ¶ 41. The FAC alleges that Defendants violated Cardenas's "clearly-established rights [to familial association] under the United States Constitution and the California Constitution" *Id*. at ¶ 42. Although the County's motion mentions parents and children's "constitutionally protected liberty interest in companionship and society with each other," it does not analyze the Bane Act with respect to that constitutional right; it focuses on Izazaga's constitutional right to medical care and exclusively discusses Izazaga's rights on reply. In other words, the County's motion does not actually address Cardenas's claim, which is the sole basis for the Bane Act claim. Accordingly, the motion to dismiss this claim is denied.

IV. CONCLUSION

For the foregoing reasons, the motion to dismiss is granted in part and denied in part. Cardenas's individual section 845.6 claim is dismissed with prejudice. The section 845.6

claim by Cardenas as successor-in-interest is dismissed with leave to amend. The successor-in-interest negligence claims based upon violation of section 845.6 and deliberate indifference to Izazaga's serious medical need are dismissed with leave to amend. The County's motion to dismiss Cardenas's individual Bane Act claim is denied. Any second amended complaint must be filed by no later than November 5, 2024. Cardenas must plead her best case.

IT IS SO ORDERED.

Dated: October 22, 2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
IT IS SO ORDERED
Judge Donna M. Ryu

Donna M. Ryu
Chief Magistrate Judge

United States District Court
Northern District of California